

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN M BALE,

Plaintiff,

V.

CHARLES N SCHANDEL et al.,

Defendant.

CASE NO. C12-5957 RJB-JRC

## REPORT AND RECOMMENDATION

NOTED FOR:  
NOVEMBER 1, 2013

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creature. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Plaintiff filed a motion for voluntary dismissal of this action (ECF No. 28). In his motion plaintiff asked the Court to “save my rights to file again.” The Court called for a response and gave plaintiff the ability to file a reply because this would be a dismissal pursuant to Fed. R. Civ. P. 41(a)(2). A dismissal pursuant to Fed. R. Civ. P. 41(a)(2) is made under terms the Court considers proper.

1 Defendants responded and object to the Court granting plaintiff “relief apart from a  
2 dismissal of his claims.” (ECF No. 30). Defendants argued that plaintiff had presented no  
3 authority for tolling the running of the statute of limitations (*id.*). Plaintiff did not file a reply.

4 The Court recommends dismissal of this action without prejudice. This dismissal will not  
5 toll the running of the statute of limitations or guarantee that plaintiff will be able to file an  
6 action at a later date, but the dismissal itself will not prevent a later filing. Plaintiff will still be  
7 charged the full filing fee for this action. *See*, 28 U.S.C. § 1915(b)(1).

8 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
9 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
10 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
11 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
12 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
13 November 1, 2013, as noted in the caption

14 Dated this 8th day of October, 2013.

15   
16 J. Richard Creatura  
17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24